

AMENDED IN SENATE APRIL 7, 2011

AMENDED IN SENATE MARCH 29, 2011

SENATE BILL

No. 296

Introduced by Senator Wright

February 14, 2011

An act to amend Section 186.22a of the Penal Code, relating to gangs.

LEGISLATIVE COUNSEL'S DIGEST

SB 296, as amended, Wright. Criminal street gangs: injunction: petition for exemption.

Existing law provides for injunctive relief from the unlawful activities of criminal street gangs, the duration of which is within the court's discretion. Existing law provides for injunctive relief from a person who engages in harassment, as specified, of a duration of not more than 3 years, and provides that, at any time within the 3 months before the expiration of the injunction prohibiting harassment, the plaintiff may apply for a renewal of that injunction by filing a new petition.

This bill would provide that, in addition to any other administrative or judicial remedies, in an action relating to an injunction pursuant to ~~the provisions above~~ *specified provisions to enjoin criminal street gang activity*, an individual may file with the court a petition on a form developed by the Judicial Council to exempt him or her from the injunction or portions of the injunction. The bill would require the petitioner to state that he or she meets specified conditions. The bill would allow the court to hold an evidentiary hearing and receive any relevant evidence in order to rule on any petition filed pursuant to these provisions. *The bill would permit the court to require the petitioner to testify at this hearing. The bill would require the petitioner to notify any prosecuting agency that filed the action for injunction of the filing*

of the petition. The bill would permit the court to charge the petitioner for the reasonable costs of filing the petition. The bill would provide that its provisions pertaining to the petition process become operative on July 1, 2012. The bill would express legislative findings, declarations, and intent regarding the enactment of the above provisions.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. The Legislature finds and declares the following:
2 (a) Under federal law applicable to the California gang database
3 (28 C.F.R. 23.20(h)), there is a five-year limit on the retention of
4 names in the system.
5 (b) Under state law relating to the registration of gang offenders
6 (subd. (c), Sec. 186.32, Pen. C.), there is a five-year limit on the
7 application of registration requirements to gang offenders.
8 (c) Existing law does not provide a time limit on the duration
9 of gang injunctions as applied to an individual.
10 (d) Members of the public subject to gang injunctions are
11 typically low-income persons who cannot afford attorneys.
12 (e) It is the intent of the Legislature to provide an inexpensive
13 means for members of the public to have affordable access to the
14 court to contest and to be removed from some or all of the
15 provisions of a gang injunction.
16 SEC. 2. Section 186.22a of the Penal Code, as amended by
17 Section 50 of Chapter 178 of the Statutes of 2010, is amended to
18 read:
19 186.22a. (a) Every building or place used by members of a
20 criminal street gang for the purpose of the commission of the
21 offenses listed in subdivision (e) of Section 186.22 or any offense
22 involving dangerous or deadly weapons, burglary, or rape, and
23 every building or place wherein or upon which that criminal
24 conduct by gang members takes place, is a nuisance which shall
25 be enjoined, abated, and prevented, and for which damages may
26 be recovered, whether it is a public or private nuisance.
27 (b) Any action for injunction or abatement filed pursuant to
28 subdivision (a), including an action filed by the Attorney General,
29 shall proceed according to the provisions of Article 3 (commencing

with Section 11570) of Chapter 10 of Division 10 of the Health and Safety Code, except that all of the following shall apply:

(1) The court shall not assess a civil penalty against any person unless that person knew or should have known of the unlawful acts.

(2) No order of eviction or closure may be entered.

(3) All injunctions issued shall be limited to those necessary to protect the health and safety of the residents or the public or those necessary to prevent further criminal activity.

(4) Suit may not be filed until 30-day notice of the unlawful use or criminal conduct has been provided to the owner by mail, return receipt requested, postage prepaid, to the last known address.

(5) (A) In addition to any other applicable administrative or judicial remedies, in any action relating to an individual subject to an injunction issued pursuant to subdivision (a), *or issued pursuant to Section 3479 or 3480 of the Civil Code enjoining criminal street gang activity as a nuisance*, the individual may petition the court to exempt him or her from all or any part of an injunction order.

(B) The petition shall specify whether the individual is requesting to be exempt from the entire injunction order or any part of that order. The individual shall in the petition state all of the following:

(i) The individual has not violated any provisions of an injunction issued pursuant to subdivision (a), *or issued pursuant to Section 3479 or 3480 of the Civil Code enjoining criminal street gang activity as a nuisance*, of which he or she had notice.

(ii) The individual is not a member of the criminal street gang that is subject to the injunction.

(iii) The individual is not a member of any other criminal street gang, as defined in subdivision (f) of Section 186.22.

(iv) The individual does not have any criminal charges pending against him or her.

(v) The individual has not been arrested in any jurisdiction within three years prior to making the petition of which this certification is a part.

(vi) The individual has not obtained any gang-related tattoos within three years prior to making the petition of which this certification is a part.

(vii) The individual has not, within three years prior to making the petition of which this certification is a part, knowingly been documented by any law enforcement agency to have been in the company or association of any other gang member that the individual knows to be covered by the injunction, other than an immediate family member.

(viii) The individual is not acting, and agrees that he or she will not act, to promote or assist any activities prohibited by the injunction.

(C) The court may hold an evidentiary hearing in order to rule on any petition filed pursuant to subparagraph (A). The court may, in its discretion, receive any evidence relevant to whether the petition should be granted or denied. *The court may require the petitioner to testify at the evidentiary hearing.*

(D) At the time notice of an injunction filed pursuant to subdivision (a), *or pursuant to Section 3479 or 3480 of the Civil Code enjoining criminal street gang activity as a nuisance*, is served on any person, the petition form developed by the Judicial Council for use by an individual seeking to be exempt from all or part of an injunction shall be attached to the documents that are served.

(E) A petition for exemption, filed pursuant to this paragraph, may be filed no more than once per three-year period. *The petitioner shall provide notice of the filing of the petition to any prosecuting agency that filed the action for injunction pursuant to subdivision (a) or pursuant to Section 3479 or 3480 of the Civil Code to enjoin criminal street gang activity as a nuisance.*

(F) *The court may charge the petitioner for the reasonable costs of filing the petition.*

(6) Any prosecuting agency filing any action for injunction pursuant to subdivision (a), *or Section 3479 or 3480 of the Civil Code to enjoin criminal street gang activity as a nuisance*, shall, at the time of filing the action with the court, provide a copy of the filing to the local public defender's office.

(c) Whenever an injunction is issued pursuant to subdivision (a), ~~or Section 3479 of the Civil Code, to abate gang activity constituting a nuisance or 3480 of the Civil Code to enjoin criminal street gang activity as a nuisance~~, the Attorney General or any district attorney or any prosecuting city attorney may maintain an action for money damages on behalf of the community or

neighborhood injured by that nuisance. Any money damages awarded shall be paid by or collected from assets of the criminal street gang or its members. Only members of the criminal street gang who created, maintained, or contributed to the creation or maintenance of the nuisance shall be personally liable for the payment of the damages awarded. In a civil action for damages brought pursuant to this subdivision, the Attorney General, district attorney, or city attorney may use, but is not limited to the use of, the testimony of experts to establish damages suffered by the community or neighborhood injured by the nuisance. The damages recovered pursuant to this subdivision shall be deposited into a separate segregated fund for payment to the governing body of the city or county in whose political subdivision the community or neighborhood is located, and that governing body shall use those assets solely for the benefit of the community or neighborhood that has been injured by the nuisance.

(d) No nonprofit or charitable organization which is conducting its affairs with ordinary care or skill, and no governmental entity, shall be abated pursuant to subdivisions (a) and (b).

(e) Nothing in this chapter shall preclude any aggrieved person from seeking any other remedy provided by law.

(f) (1) Any firearm, ammunition which may be used with the firearm, or any deadly or dangerous weapon which is owned or possessed by a member of a criminal street gang for the purpose of the commission of any of the offenses listed in subdivision (e) of Section 186.22, or the commission of any burglary or rape, may be confiscated by any law enforcement agency or peace officer.

(2) In those cases where a law enforcement agency believes that the return of the firearm, ammunition, or deadly weapon confiscated pursuant to this subdivision, is or will be used in criminal street gang activity or that the return of the item would be likely to result in endangering the safety of others, the law enforcement agency shall initiate a petition in the superior court to determine if the item confiscated should be returned or declared a nuisance.

(3) No firearm, ammunition, or deadly weapon shall be sold or destroyed unless reasonable notice is given to its lawful owner if his or her identity and address can be reasonably ascertained. The law enforcement agency shall inform the lawful owner, at that person's last known address by registered mail, that he or she has

1 30 days from the date of receipt of the notice to respond to the
2 court clerk to confirm his or her desire for a hearing and that the
3 failure to respond shall result in a default order forfeiting the
4 confiscated firearm, ammunition, or deadly weapon as a nuisance.

5 (4) If the person requests a hearing, the court clerk shall set a
6 hearing no later than 30 days from receipt of that request. The
7 court clerk shall notify the person, the law enforcement agency
8 involved, and the district attorney of the date, time, and place of
9 the hearing.

10 (5) At the hearing, the burden of proof is upon the law
11 enforcement agency or peace officer to show by a preponderance
12 of the evidence that the seized item is or will be used in criminal
13 street gang activity or that return of the item would be likely to
14 result in endangering the safety of others. All returns of firearms
15 shall be subject to Chapter 2 (commencing with Section 33850)
16 of Division 11 of Title 4 of Part 6.

17 (6) If the person does not request a hearing within 30 days of
18 the notice or the lawful owner cannot be ascertained, the law
19 enforcement agency may file a petition that the confiscated firearm,
20 ammunition, or deadly weapon be declared a nuisance. If the items
21 are declared to be a nuisance, the law enforcement agency shall
22 dispose of the items as provided in Sections 18000 and 18005.

23 SEC. 3. The Judicial Council shall develop a petition form, by
24 July 1, 2012, that meets the requirements of paragraph (5) of
25 subdivision (b) of Section 186.22a for use by an individual seeking
26 to be exempt from all or a part of an injunction, as specified in
27 subparagraph (A) of paragraph (5) of subdivision (b) of Section
28 186.22a.

29 SEC. 4. The amendments made to Section 186.22a of the Penal
30 Code, as contained in Section 2 of this act, shall become operative
31 on July 1, 2012.